

Exhibit 12

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC
and THE REYNOLDS and
REYNOLDS COMPANY,

Madison, Wisconsin
June 27, 2017
1:50 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT-SECOND DAY OF EVIDENTIARY HEARING

AFTERNOON SESSION

HELD BEFORE THE HONORABLE JAMES D. PETERSON,

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.
BY: JENNIFER GREGOR
One East Main Street, Ste. 500
Madison, Wisconsin 53703

Kellogg, Hansen, Todd, Figel & Frederick, PLLC
BY: MICHAEL NEMELKA
AARON PANNER
DAVID SCHWARZ
DEREK HO
JOSHUA HAFENBRACK
KEVIN MILLER
JOHANNA ZHANG
1615 M Street, NW, Ste. 400
Washington, DC 20036

Also present: Stephen Cottrell - Authenticom president
Steve Robb - IT technician

Lynette Swenson RMR, CRR, CRC
U.S. District Court Federal Reporter
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703

1 Q Okay. Now, go down, and then it says "only if," and
2 then it lists three conditions. So CDK can pull the data
3 from the Reynolds DMS only if. Do you see the *only if*?

4 A Yes.

5 Q Let's go to the third. "CDK's access to the
6 Reynolds DMS does not materially degrade or otherwise
7 materially adversely affect the operation of the
8 applicable Reynolds DMS or place Reynolds and/or a
9 Reynolds dealer at a material operational or security
10 risk - provided, however, that any such material adverse
11 risk -- effect or risk covered by this Section 4.6 must
12 be demonstrated to CDK by Reynolds with clear and direct
13 evidence and that CDK shall be given a reasonable
14 opportunity to cure any such material adverse effect or
15 risk." Do you see that?

16 A Yes.

17 Q Did Reynolds ever invoke this clause?

18 A Not that I can remember.

19 Q Reynolds never even invoked this clause that the
20 thousands of usernames that CDK was using put any
21 material effect or risk on Reynolds' system; isn't that
22 right?

23 A During this period of time, because we had to
24 protect it, we didn't know what they were doing, so it
25 did not put a material impact on the system.

1 Q They're this pulling all this data. They're still,
2 as you say, grinding, aren't they?

3 A No. We had set them up -- we set them up. We knew
4 exactly when they are going and what they were doing. We
5 set up all those parameters to do that.

6 Q But you never invoked this clause; right? That's
7 right?

8 A I said no.

9 Q And if you were to invoke it, you were going to --
10 you were required to show by clear and convincing
11 evidence that it did put the system at risk, weren't you?

12 A We would have, yes.

13 Q Which means providing specific examples; right?

14 A That's correct.

15 Q And if you did provide such specific examples, you
16 would at least give CDK a chance to fix it; right? Is
17 that right?

18 A Depending on what it was.

19 Q And in the one example in the past --

20 A First we'd shut them off.

21 Q Mr. Schaefer --

22 A They'd shut off.

23 Q Mr. Schaefer, in the past ten years there was one
24 example where you actually called Mr. Cottrell and said

25 "I have one query running on a loop. Will you please fix

1 it?" Isn't that right?

2 A I think Steve and I had several other conversations,
3 but that's the only one I was specific on because it's
4 the only one that I knew at a given point in time.

5 Q Right. And he fixed that in one day, didn't he?

6 A One day doesn't -- I don't know that. That's --
7 that's what he said. I don't know.

8 Q All right. Mr. Schaefer, will you please turn to
9 the signature page?

10 A Yes.

11 Q This agreement was signed by Bob Brockman, wasn't
12 it?

13 A Yes, sir.

14 Q And it also assigned -- who signed it for CDK?

15 A I think that's Ron Brockman, I think.

16 Q Right. The Senior Vice President of Business
17 Development at CDK; right?

18 A Um-hmm.

19 Q Turn to the last page, Exhibit DEA 2. I was very
20 interested in your testimony when you said that you could
21 never disclose the data elements that you pulled for
22 specific vendors to other vendors. Do you remember that?

23 A I'm sorry, I was trying to get to the -- I was
24 trying to get to your page --

25 Q That's my fault. Thank you --

1 A You're reading awful fast on me.

2 THE COURT: We can only talk one at a time.

3 Q I'm sorry. That's my fault, Mr. Schaefer. I should
4 let you --

5 A You knew where I was at. I was trying to get there.

6 THE COURT: Even your apologies are overlapping.
7 One at a time.

8 MR. ROSS: An endless loop.

9 BY MR. NEMELKA:

10 Q You said that you could never disclose the data
11 elements that you pull for particular vendors to others.
12 Didn't you say that to Ms. Gulley?

13 A To others?

14 Q To other third parties.

15 A That's correct.

16 Q In this exhibit, this is all the information that
17 CDK was required to give Reynolds about each of its
18 vendor customers that it was pulling data from Reynolds'
19 dealers from, isn't it?

20 A It's what we requested.

21 Q Right. The vendor name, the point of contact, their
22 address, their contact name, their DMS system number,
23 their store number, their branch number, their user
24 login, the specific data access currently provided by CDK
25 to these vendors, the data interfaces, the frequency of

1 but nicer than Reynolds. Sorry, guys.

2 THE COURT: Let me ask you this: I've heard a
3 lot in the last couple of days about how dealers always
4 felt like the data was theirs and they ought to be
5 entitled to give their login credentials to Authenticom
6 so that they could get their own data. Now you're
7 suggesting that you had to do this distasteful thing of
8 twisting the arms of the dealers to get them to give up
9 their credentials so that you could do hostile
10 integration. I thought, based on what I've heard so far,
11 dealers were only too happy to give those credentials to
12 third parties.

13 THE WITNESS: Not always. So many dealers are.
14 It's a shrinking number because the industry has been
15 talking about this for five, six years. This hit the
16 mainstream in probably 2012. There were a lot of
17 industry observers writing articles about this whole
18 situation: Data access, hostile access and where would
19 it go. And a lot of information about what does it mean.
20 So in the dealer world you're at risk.

21 NADA issued their letter in, I think it was 2013,
22 September of 2013, and that really created a firestorm of
23 concern in dealerships. One of the things that happened
24 is that they -- dealers started calling and saying I
25 don't know where my data is going. You're CDK and you've

1 got this thing called DMI and you've got this 3PA thing
2 and I want to know where my data is going. And so we'd
3 send them the reports. But they'd say I've got other
4 vendors that I'm sending data too. Where are they on
5 this report? We'd say I can't tell you. I don't know.
6 That's because you're giving credentials to a third
7 party. So I can't account for that for you. I can't
8 tell you what they're doing with it. So that was -- that
9 was the big moment.

10 THE COURT: But that clearly isn't the issue
11 with Authenticom because they've got the best platform,
12 that I've heard about in this case, to tell the dealers
13 exactly where their data is going.

14 THE WITNESS: Well, I would contest that. I
15 think our --

16 THE COURT: You've got DDX.

17 THE WITNESS: Yeah. We've got DDX. And I think
18 our reporting is more comprehensive and more useful to
19 what the dealer really wants to do.

20 THE COURT: Maybe it is better, but the idea of
21 somebody calling up and saying hey, I'm using
22 Authenticom's DealerVault and I don't know where my data
23 is going, that's implausible.

24 THE WITNESS: I think in that case that's true.
25 Authenticom, my guess, is they are doing a good job

1 explaining where the data is going. I don't think
2 they're missing it.

3 MR. RYAN: Thank you, Your Honor.

4 BY MR. RYAN:

5 Q When the 3PA -- when was the 3PA refresh officially
6 rolled out?

7 A July 2015.

8 Q And at that time, about how many vendors were in the
9 3PA Program?

10 A About 110, I think, is in my declaration.

11 Q And how many vendors are in the 3PA Program today?

12 A More than twice that: 220, 250, in that range.

13 Q And now can I --

14 MR. RYAN: Can I ask that defendants' Exhibit 41
15 be put up on the screen, please. If I can hand the
16 witness a copy, Your Honor.

17 THE COURT: Sure.

18 BY MR. RYAN:

19 Q So if you could take a look at defendants' Exhibit
20 41, Mr. Gardner, and we're not going to spend much time
21 on this. But can you just tell me what we've got here?

22 A Yes. This is -- it begins with an email from
23 Stephanie at Authenticom advising a dealer that their
24 profile -- that DealerVault is using an account in other
25 words -- has been disabled and that they're proposing

HOWARD GARDNER - DIRECT

1 creating a new profile so that DealerVault will continue
2 to work, and if it's interesting to the dealer that they
3 would -- Authenticom would offer a new tool that would
4 automatically re-enable the accounts on an hourly basis.
5 And they would be using a tool that's based on a function
6 called UUP in the DMS, which is a function called Update
7 User Profile, which happens to have enormous power.
8 Because it can, once in your hands, you can add accounts,
9 you did delete accounts, you can increase permissions.
10 It's the keys to the kingdom virtually in terms of user
11 access. So the dealer is saying --

12 Q The dealer is who?

13 A The dealer is Healey Brothers.

14 Q It's on the front page of the document.

15 A The dealer is sending this to --

16 Q Hang on just a second. Go to the next page. So
17 who's the dealer on this document? If we can blow this
18 up.

19 A The dealer is Healey Brothers, and it's being sent
20 by Brad Warren, Director of Technology. And he's saying
21 "Jeff" -- Jeff Barr is our Product Director for DDX --
22 "This company is out of control now. They're offering a
23 tool to run a script and re-enable their profiles ever
24 hour." So obviously a dealer very concerned about this
25 particular situation.

HOWARD GARDNER - DIRECT

1 THE COURT: See you tomorrow morning.

2 (Proceedings concluded at 7:10 p.m.)

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5 I, LYNETTE SWENSON, Certified Realtime and
6 Merit Reporter in and for the State of Wisconsin, certify
7 that the foregoing is a true and accurate record of the
8 proceedings held on the 27th day of June 2017 before the
9 Honorable James D. Peterson, District Judge for the
10 Western District of Wisconsin, in my presence and reduced
11 to writing in accordance with my stenographic notes made
12 at said time and place.
13 Dated this 3rd day of July 2017.

14

15

16 /s/_____

17 Lynette Swenson, RMR, CRR, CRC
18 Federal Court Reporter

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